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In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 963

STATE OF GEORGIA AND THE PUBLIC SERVICE COMMISSION OF THE STATE OF GEORGIA, APPELLANTS

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

MOTION TO AFFIRM

Pursuant to paragraph 1(c) of Rule 16 of the Revised Rules of this Court, the United States of America and the Interstate Commerce Commission move that the judgment of the district court be affirmed.

QUESTION PRESENTED

Whether the Interstate Commerce Commission's regulations prohibiting motor carriers from utilizing in interstate commerce terminals or vehicles in which any passengers are segregated by race violate the Interstate Commerce Act.

STATEMENT

This is a direct appeal from a final judgment of a three-judge district court in the Northern District of Georgia convened pursuant to 28 U.S.C. 2284 and 2325. The court below unanimously dismissed appellants' complaint seeking to set aside and enjoin the enforcement of regulations adopted by the Interstate Commerce Commission prohibiting racial segregation in motor common carrier transportation of passengers in interstate commerce.

On May 29, 1961, the Attorney General filed a petition for rule-making with the Commission. 86 M.C.C. 743, 754; see Appendix, *infra*, p. 11. The petition proposed seven regulations to prohibit discrimination on the basis of race, color, creed, or national origin in the use of motor vehicles or terminal facilities in interstate commerce. The proposed regulations also would have required motor common carriers of passengers to post a sign in their vehicles operated in interstate commerce that seating is without regard to race, color, creed, or national origin, and not to use passenger terminals in interstate commerce which failed to post the regulations. Finally, the Attorney General proposed a regulation to require motor common carriers in interstate commerce to report interferences with the requirements of law and the regulations to the Commission.

On June 19, 1961, the Commission instituted a rule-making proceeding pursuant to Part II of the Inter-

state Commerce Act and Section 4 of the Administrative Procedure Act (5 U.S.C. 1003). The notice and order of this proceeding were served upon all motor common carriers of passengers operating in interstate or foreign commerce in the United States and subject to the Interstate Commerce Act, mailed to Governors and regulatory agencies of the States, and published in the Federal Register, 26 Fed. Reg. 5530. Statements and replies were filed by several parties, and oral argument was heard by the entire Commission on August 15, 1961. Appellants did not participate at any stage of the proceeding before the Commission.

On September 22, 1961, the entire Commission unanimously issued its report and order adopting the proposed regulations with certain modifications.[1] The report includes the following findings (86 M.C.C. at 745-746; App., *infra*, p. 14):

> The record clearly establishes that discriminatory practices in violation of section 216(d) are being followed by the passenger-carrier respondents. Indeed it is not disputed on this record, and we so find, that in a substantial part of the United States many Negro interstate passengers are subjected to racial segregation in several forms. On vehicles, they continue

[1] For example, rather than phrasing the scope of the first regulation in terms of an "interstate motor carrier of passengers" operating "as such," the regulation is in terms of a "motor common carrier of passengers subject to section 216 of the Interstate Commerce Act" operating "in interstate or foreign commerce." The proposed regulations were also modified to provide for posting of signs in vehicles until January 1, 1963, and thereafter for the posting of notice on tickets.

> to be subjected to segregated seating based upon race. In many motor passenger terminals, Negro interstate passengers are compelled to use eating, restroom, and other terminal facilities which are segregated. In some instances, such racial segregation of interstate passengers is enforced by the carriers or their employees. In many cases, it has been enforced by local officials purporting to apply various State and local racial segregation laws and ordinances. Many terminals display signs which in various ways indicate racially designated facilities. Some signs appear to distinguish between intrastate and interstate passengers by means of such legends as "colored intrastate," "white intrastate," and "interstate." Moreover, Negro interstate passengers are often required to establish affirmatively, as by producing a ticket, their interstate passenger status to avoid being subjected to racial segregation in the use of terminal facilities, a showing which is not required of white passengers.

On October 31, 1961, appellants filed a complaint in the district court seeking to set aside and enjoin the Commission's regulations. The three-judge district court, in unanimously sustaining the Commission's decision and regulations, noted that the State's principal attack was based upon the allegation that the Commission had attempted to regulate intrastate commerce. The court held (201 F. Supp. 813, 814–815; J.S. App. 56–57):

> It seems that there can be no longer any doubt but that the Interstate Commerce Commission has full power over the regulation of

both vehicles and facilities of common carriers engaged in interstate commerce. See *Southern Railway Co.* v. *United States*, 222 U.S. 20; *Morris* v. *McComb*, 332 U.S. 422. In view of the fact that the present order deals expressly with vehicles when used in interstate commerce and terminal facilities when used in interstate commerce, it seems to follow that this is an order regulating vehicles and facilities of interstate commerce rather than, as the State contends, the subject matter of intrastate commerce. We hold that to the extent that such regulation of interstate vehicles and facilities affects strictly intrastate matters, this effect is incidental. Such effect as may follow from the economic necessities touching on the operation of the motor carrier industry cannot, we think, prevent the exercise by the Interstate Commerce Commission of its recognized right to regulate interstate commerce. Of course, nothing in the order and nothing here decided by us touches in any way the power of the Georgia Public Service Commission to regulate purely intrastate motor carrier transportation in any manner that has heretofore been legally open to it.

ARGUMENT

The State[2] contends that the regulations of the Interstate Commerce Commission prohibiting racial discrimination in vehicles and facilities used by motor

[2] Appellants' legal interest in pursuing this appeal is questionable. If appellants' desire to enforce integration in intra state transportation, as they suggest (J.S. 14, 50), appellees do not question their authority to do so. No conflict between state and federal regulations would result were Georgia to adopt this course. Moreover, appellants do not claim that Georgia

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common carriers in interstate commerce are invalid. We submit, on the contrary, that the Commission has acted within its authorized powers and that the decision below is clearly correct.

1. Section 203(a)(19) of the Interstate Commerce Act expressly extends the Commission's jurisdiction to all vehicles and facilities of motor common carriers operating in interstate commerce.[3] See *Boynton* v. *Virginia*, 364 U.S. 454, 459–460. Thus, the Commission's jurisdiction to prohibit discrimination under Section 216 includes all vehicles and terminals used by motor carriers in interstate commerce. When the carriers' same vehicles and terminals are used in both

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has either begun to enforce integration or is even seriously considering such a program. This alleged conflict is, therefore, purely hypothetical.

If, on the other hand, Georgia is actually challenging the Commission's orders for the purpose of perpetuating racial segregation, it is quite plain that the orders do not invade any lawful power reserved to the States by Section 202(b) of the Interstate Commerce Act. This Court has made patently clear that a state has no lawful power to enforce, require, or support racial segregation in the facilities of transportation, whether interstate or intrastate. *Bailey* v. *Patterson*, 369 U.S. 31, 33; *Gayle* v. *Browder*, 352 U.S. 903; *Boynton* v. *Virginia*, 364 U.S. 454.

[3] Section 203(a)(19) of the Act, 49 U.S.C. 303(a)(19), provides:

"The 'services' and 'transportation' to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith."

interstate and intrastate commerce, the Commission retains full authority over them. This Court has held, under the Safety Appliance Act, as amended, 45 U.S.C. 8, that "it is no objection to such an exertion of [the Commission's] power [over interstate commerce] that the dangers intended to be avoided arise, in whole or in part, out of matters connected with intrastate commerce." *Southern Ry. Co.* v. *United States*, 222 U.S. 20, 27. See also *Baltimore & Ohio R.R.* v. *Interstate Commerce Commission*, 221 U.S. 612, 618. Similarly, the Commission's authority to regulate motor vehicles and facilities in interstate commerce is not affected by the fact that such regulation may affect intrastate commerce. In *Morris* v. *McComb*, 332 U.S. 422, 433, this Court decided that the Commission could prescribe qualifications and maximum hours for drivers who spent only four percent of their time in interstate commerce, where the interstate trips were "a natural, integral and apparently inseparable part of the common carrier service."

The regulations issued by the Commission regulate interstate commerce and are therefore within the authority conferred by the Act. They prohibit motor common carriers of passengers from "operat[ing] a motor vehicle in interstate or foreign commerce" on which there is discriminatory seating and from using racially segregated terminal facilities "in the operation of vehicles in interstate or foreign commerce." To be sure, the regulations also affect intrastate commerce. As appellants argue (J.S. 12) and as the Commission found (see the Appendix, *infra*, pp. 16–17), many bus operators have, for various

reasons, combined their interstate and intrastate operations, so that the same buses simultaneously carry both interstate and intrastate passengers, and the terminals are used at the same time by both types of passengers. However, the consideration that there is an incidental effect upon intrastate commerce cannot, the court below correctly held, "prevent the exercise by the Interstate Commerce Commission of its recognized right to regulate interstate commerce" (201 F. Supp. at 815; J.S. App. 56–57).

2. The Commission's regulations do not conflict with Section 202(b) of the Act,[4] which reserves to the States their power of regulation over intrastate commerce. We agree with appellants that Section 202 (b), as well as Section 216(e),[5] was intended to withhold the type of authority over motor carriers exercised by the Commission over intrastate railroad rates—the authority upheld in *Houston, East & West Texas Ry. Co.* v. *United States,* 234 U.S. 342 (the so-called *Shreveport Rate Case*). There the Court held

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[4] Section 202(b) of the Act, 49 U.S.C. 302(b), provides:

"Nothing in this part shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof."

[5] Section 216(e) of the Act, 49 U.S.C. 316(e), provides in part:

"* * * That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

that the Commission could regulate intrastate railroad rates when necessary in order to regulate interstate rates. *Id.* at pp. 351–352. But the present case does not involve rates; nor does it involve the *Shreveport* principle that "interstate *carriers* [are] instruments of interstate commerce," subject to plenary regulation by the Commission, without respect to whether particular vehicles or facilities are being operated in interstate commerce at any given time (emphasis added; *id.* at 351). This appeal concerns only the regulation of physical instrumentalities (buses and terminals) actually used in interstate commerce. In short, the distinction which is crucial here is between the regulation of instrumentalities physically employed in interstate commerce, and the *Shreveport* power—which the Commission does not have as to motor carriers—over interstate carriers without respect to their operation of particular vehicles and facilities. The former jurisdiction considerably antedates the *Shreveport* decision and is not affected by Section 202(b). See *Morris* v. *McComb, supra.* Indeed, the Commission's full authority over such physical instrumentalities used in interstate commerce is shown not only by the clear language of Section 203(a)(19) (see *supra*, pp. 6–7), but also by the legislative history of Section 202(b) itself. When a broader provision than Section 202(b) was suggested on the Senate floor (J.S. 67–68), it was rejected after Senator Wheeler argued that the broader section went beyond withholding the power over railroad rates upheld in the *Shreveport* case and might interfere

with the regulation of physical instrumentalities (J.S. 73).

CONCLUSION

For the foregoing reasons, we respectfully submit that the judgment of the district court should be affirmed.

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JUNE 1962.

APPENDIX

INTERSTATE COMMERCE COMMISSION

No. MC–C–3358

DISCRIMINATION IN OPERATIONS OF INTERSTATE MOTOR CARRIERS OF PASSENGERS

Decided September 22, 1961

Upon petition, rules and regulations to be observed by motor common carriers of passengers operating in interstate or foreign commerce, governing the practices of such carriers with respect to unjust discrimination, prescribed.

REPORT OF THE COMMISSION ON ORAL ARGUMENT

BY THE COMMISSION:

This proceeding, instituted under part II of the Interstate Commerce Act and section 4 of the Administrative Procedure Act, upon petition of the Attorney General of the United States, brings before us for determination the lawfulness and propriety of certain regulations proposed by the Attorney General to implement further the provisions of the Interstate Commerce Act with respect to the nonsegregated use of motorbuses and related facilities operated and utilized in the interstate common carrier transportation of passengers. Our order instituting this proceeding set forth the regulations proposed; named as respondents all motor common carriers of passengers operat-

ing in interstate or foreign commerce within the United States subject to the act; and provided for the filing by interested persons of statements of facts, views, and arguments, and of replies thereto, all of which have been considered; and for oral argument, which has been held.

No one has challenged the procedure followed or requested oral hearing, and the facts concerning segregation practices disclosed by the record are not in dispute. In a reply statement, the Attorney General submitted certain clarifying amendments to the regulations which do not broaden the scope of his original proposal, and to which no objection was made by any of the parties. The proposed regulations as so amended are set forth in appendix A hereto.

Briefly, it is the position of the Attorney General and those favoring his proposal that the decision in *Keys* v. *Carolina Coach Co.*, 64 M.C.C. 769, and *Boynton* v. *Virginia* 364 U.S. 154, call for further definitive action by use to implement fully the mandate against discrimination expressed in section 216(d) of the act; that conditions existing over a large portion of the Nation make the establishment of the proposed regulations necessary; and that, although the act prohibits the racial segregation of interstate passengers, such regulations will facilitate the enforcement of the statutory prohibitions and eliminate the unjust discrimination alleged to have adversely affected the morale of Negro service personnel and the conduct of the United States' foreign relations.

The States of Alabama and Mississippi oppose prescription of any regulations. Generally the opposition otherwise is directed to specific provisions of the regulations. Basically, the arguments advanced in opposition (1) challenge our power through the proposed regulations to control or affect intrastate com-

merce, (2) claim that regulations affecting interstate commerce are unnecessary because the Interstate Commerce Act now prohibits discrimination directed against interstate bus passengers, and (3) question the wisdom of prescribing general regulations applicable in areas where such unjust discrimination does not exist. The motor carrier respondents to whom the proposed regulations are directed, and whose operations would be directly affected, as a whole did not file factual representations. Their position is primarily one of overall opposition to the establishment of the regulations.

We have no doubt as to this Commission's power to promulgate regulations of the nature proposed. Section 216(d), as pertinent here, provides:

> It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause an undue or unreasonable preference or advantage to any particular person * * * in any respect whatsoever; or to subject any particular person * * * to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever * * *.

While these provisions are usually enforced by orders entered, after opportunity for hearing, under section 216(e) requiring a particular carrier or carriers to cease and desist from discriminatory or prejudicial practices in which they are found to have been engaged, such procedure does not represent an exclusive remedy for the enforcement of the prohibitions contained in that section. The Commission has, in fact, exercised its rulemaking power in this area. See *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467; 47 M.C.C. 119; 53 M.C.C. 177; 71 M.C.C. 113. Power to enforce provisions of part II of the act by the promulgation of general

rules or regulations is also conferred by section 204 (a)(6). The nature and scope of the rulemaking power there set forth were delineated by the Supreme Court in *American Trucking Assns., Inc.*, v. *United States*, 344 U.S. 298, 311 (1953), where it was held that our power under section 204(b)(6) is "coterminous with the scope of agency regulation" and "must extend to 'the transportation of passengers and property by motor vehicle engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation,' regulation of which is vested in the Commission by § 202(a)."

The record clearly establishes that discriminatory practices in violation of section 216(d) are being followed by the passenger-carrier respondents. Indeed it is not disputed on this record, and we so find, that in a substantial part of the United States many Negro interstate passengers are subjected to racial segregation in several forms. On vehicles, they continue to be subjected to segregated seating based upon race. In many motor passenger terminals, Negro interstate passengers are compelled to use eating, restroom, and other terminal facilities which are segregated. In some instances, such racial segregation of interstate passengers is enforced by the carriers or their employees. In many cases, it has been enforced by local officials purporting to apply various State and local racial segregation laws and ordinances. Many terminals display signs which in various ways indicate racially designated facilities. Some signs appear to distinguish between intrastate and interstate passengers by means of such legends as "colored intrastate," "white intrastate," and "interstate." Moreover, Negro interstate passengers are often required to establish affirmatively, as by producing a ticket,

their interstate passenger status to avoid being subjected to racial segregation in the use of terminal facilities, a showing which is not required of white passengers.

Our experience in the administration of part II of the act also indicates the prevalence of these practices. It has been over 5 years since the Commission's decision in *Keys* v. *Carolina Coach Co., supra*, at which time it was our hope that carriers, working in conjunction with State and local authorities would eliminate the last vestiges of segregation in interstate bus and terminal facilities. Contrary to our hope, many obstacles have frustrated the workings of the law. Since the decision in the *Keys* case and in *National Assn. for A.O.C.P.* v. *St. Louis-S.F. Ry. Co.*, 297 I.C.C. 335, the Commission has received approximately 100 informal complaints of racial discrimination. Following these decisions, an arrangement was made with the Department of Justice under which complaints alleging racial discrimination indicating violation of the Interstate Commerce Act are investigated by us; and similar complaints alleging discriminatory practices not appearing to constitute violations of the act are referred to the Civil Rights Division of the Department of Justice for appropriate action. Included in the latter category are complaints of discrimination practiced by carriers with respect to intrastate passengers and of discrimination encountered by interstate passengers due to the action of local or State officials acting under local or State statutes, as distinguished from acts of the carrier. In addition, if the facts developed by our investigation disclose that there is no violation of the act, the results of the investigation are furnished to the Department of Justice. As to cases in which discrimination in violation of the act is shown, the policy is to refer those

cases to the appropriate United States Attorney with recommendations for appropriate action, usually criminal prosecution of the carrier and in some instances its responsible officials or employees. The Department of Justice is also informed of our action in those cases at the time of such reference.

The action taken with respect to these complaints, in accordance with the decisions of this Commission and the Federal courts may be summarized as follows: 13 cases were closed without investigation because the complaints disclosed no violation of the act or because this Commission lacked jurisdiction in the matter; investigations disclosed in 16 cases that no violations of the act were involved; investigations in 17 cases disclosed that the discrimination resulted from actions of local police or others over whom this Commission had no jurisdiction; in 9 cases investigations disclosed insufficient evidence to warrant court action; in 15 instances investigations disclosed that the complaints were justified but that sufficient remedial action already had been taken by the carriers involved; and investigations in 10 cases disclosed evidence of violations of the act and these were referred to United States Attorneys with recommendations for criminal prosecution. However, the record here shows that segregation has been practiced on such a regular basis as to convince us that case-by-case action initiated by individual complaints under section 216(e), standing alone, is not an adequate remedy. Accordingly, we conclude that the prescription of general regulations directed to interstate motor common carriers of passengers over whom we have jurisdiction is warranted to supplement the remedy provided by section 216(e).

It is recognized that many bus operators subject to our jurisdiction have for reasons of efficiency com-

bined their interstate operations with operations in intrastate commerce. Thus buses carrying interstate passengers also carry intrastate passengers, and terminals used to accommodate interstate passengers are also utilized by intrastate passengers. The question is therefore presented whether any regulations which we may prescribe may lawfully be made to affect the transportation of intrastate passengers who are traveling in the same vehicle and at the same time as interstate passengers. In *Baldwin* v. *Morgan*, 287 F. (2d) 750 (1961), a case presenting such a situation, the Court of Appeals for the Fifth Circuit held that it was discrimination violative of the Fourteenth Amendment and the Civil Rights Act to require a Negro interstate passenger to prove that he was an interstate passenger before he was permitted to use the interstate waiting room while not subjecting white passengers to the same treatment; and that the Negro plaintiffs were entitled to injunctive relief against the enforcement by local officials of waiting room segregation of intrastate passengers in the Birmingham, Ala., railroad station and to the elimination of any distinction between interstate and intrastate passenger status.

Similarly, the voluntary transportation by a passenger carrier of interstate and intrastate passengers on the same vehicle may not be offered as a justification for the separation on a racial basis of interstate passengers. Nor may interstate passengers using such common facilities be subjected to any inquiry as to whether they are traveling in intrastate or interstate commerce. Such practices would result in discrimination prohibited by section 216(d). It is our view that to enforce the provisions of the act prohibiting unjust discrimination against interstate passengers it is necessary to prohibit the use in interstate opera-

tions of any vehicle or facility on which or in which segregation is practiced.

We have considered the proposed regulations in the light of the reservations of State jurisdiction contained in the act. Section 202(b) provides, as pertinent, that "Nothing in this part shall be construed * * * to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof." And the concluding proviso of section 216(e) states:

> That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever.

Since the proposed rules are limited to facilities operated in interstate commerce, or performing services connected therewith, we see no interference with the legitimate exercise of the exclusive jurisdiction of the States to regulate intrastate commerce. The fact that compliance with the rules may for economic reasons compel a carrier to provide nonsegregated facilities for its intrastate passengers as well as its interstate passengers, presents no legal impediment to the prescription of such rules as are necessary to remove unjust discrimination against interstate commerce. We conclude, therefore, that prescription of rules such as those proposed would not conflict with the regulatory jurisdiction reserved to the States. Indeed, it has been held by the Federal courts under the equal protection clause of the Fourteenth Amendment that the States have no power to regulate intrastate transportation by requiring the segregation of intrastate passengers on vehicles or in the use of terminal facilities. See *Baldwin* v. *Morgan, supra;*

Browder v. *Gayle*, 142 F. Supp. 707, affirmed 352 U.S. 903; and *Morgan* v. *Virginia*, 328 U.S. 373.

Careful analysis and evaluation disclose that the purpose of the regulations is one with which we are in substantial agreement. We are concerned, however, with certain features of the Attorney General's proposal.

Section 1 reads as follows:

> No interstate motor carrier of passengers shall as such operate vehicles on which the seating of passengers is based upon race, color, creed, or national origin.

This section would prohibit, in effect, the use of any bus to transport passengers in interstate commerce in which the seating of passengers is segregated by race, color, creed, or national origin. In other words, a carrier may not use a bus or other vehicle to transport interstate passengers, where *any* seat on such bus is assigned on the basis of race, color, creed, or national origin. The necessity for and our power to prescribe such a rule have been discussed in the foregoing and need not be further detailed here.

Section 2 would provide that:

> Every interstate motor carrier of passengers shall conspicuously display and maintain, in each vehicle which it operates as such, a plainly legible sign or placard containing the statement, "By order of the Interstate Commerce Commission, seating aboard this vehicle is without regard to race, color, creed, or national origin."

We believe that the posting of an appropriate notice aboard buses carrying interstate passengers is desirable since it will visibly serve to remind passengers of their legal rights and to inform the public un-

equivocally of the carriers' intention and duty to obey the law.

Respondents and others object to this as a general requirement on the principal ground that sign posting is not warranted except in the limited geographic areas where discrimination has been shown to exist. In this connection, however, it is pertinent to note that certificates of public convenience and necessity issued by us to bus companies domiciled outside the so-called affected areas authorize operations within as well as without those areas, and that in numerous instances—indeed, as an everyday operating matter—buses originating in one section of the country are used on "through schedules" to and through other sections. In the circumstances, we do not believe that any territorial limitation of the requirement is warranted.

We are not convinced at this time, however, that the problem sought to be met requires the prescription of this rule for an indefinite period, and we are of the opinion, and find, that such requirement should terminate 1 year from the effective date of our order herein, unless this Commission shall by subsequent order modify the time. We find also that concurrently with such termination of sign posting in vehicles, there shall become effective a requirement that every motor common carrier of passengers shall cause to be printed on each ticket sold by it for transportation on a vehicle operated in interstate or foreign commerce a plainly legible notice to the same effect as that described in section 2. Carriers may begin printing this notice on tickets as soon as they elect. While not as conspicuous as vehicle signs, the fact that each passenger possesses such assurance on the ticket as part of his contract for transportation

should tend to protect the individual from harassment.

Section 3 of the proposed regulations, dealing with terminal facilities, would provide that:

> No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race, color, creed, or national origin. As used in this regulation the words "terminal facilities" mean all facilities including waiting room, restroom, eating, drinking, and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation.

The meaning of the term "terminal facilities" affects not only section 3 but sections 4 and 5 of the proposed regulations as well. The definition of this term is phrased in the language of the Supreme Court in *Boynton* v. *Virginia, supra,* applying section 216(d). Also section 203(a)(19) provides that:

> The "services" and "transportation" to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith.

In the consideration of this regulation, we are constrained on this record to be guided by the language

of the Court in *Boynton v. Virginia*, *supra*, at pages 460–464, reading as follows:

> And so here, without regard to contracts, if the bus carrier has volunteered to make terminal and restaurant facilities and services available to its interstate passengers as a regular part of their transportation, and the terminal and restaurant have acquiesced and cooperated in this undertaking, the terminal and restaurant must perform these services without discriminations prohibited by the Act. In the performance of these services under such conditions the terminal and restaurant stand in the place of the bus company in the performance of its transportation obligations. * * *
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> * * * * * *
>
> All of these things show that this terminal building, with its grounds, constituted one project for a single purpose, and that was to serve passengers of one or more bus companies—certainly Trailways' passengers. * * * All of this evidence plus Trailways' use on this occasion shows that Trailways was not utilizing the terminal and restaurant services merely on a sporadic or occasional basis. This bus terminal plainly was just as essential and necessary, and as available for that matter, to passengers and carriers like Trailways that used it, as though such carriers had legal title and complete control over all of its activities. Interstate passengers have to eat, and the very terms of the lease of the built-in restaurant space in this terminal constitute a recognition of the essential need of interstate passengers to be able to get food conveniently on their journey and an undertaking by the restaurant to fulfill that need. Such passengers in transit on a paid interstate Trailways journey had a right to expect that this essential transportation food service voluntarily provided for them under such circumstances would be rendered without

> discrimination prohibited by the Interstate Commerce Act. * * * We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act. We decide only this case, on its facts, where circumstances show that the terminal and restaurant operate as an integral part of the bus carrier's transportation service for interstate passengers.

It is difficult to envision a situation in which it would not be a violation of the proposed rules for a carrier operating its buses in interstate commerce on regular schedules and over regular routes to utilize any place of business as a regular rest or meal stop which provides the usual terminal facilities on a segregated basis. If the carrier volunteers to make the services available and those actually furnishing the services acquiesce and cooperate in this undertaking, the services must be furnished without discrimination. However, considering section 203(a)(19) and the *Boynton* case together, as we must, it seems clear that proposed rule 3 would not be applicable, for example, to every independently operated roadside restaurant at which a bus stops solely to pick up or discharge occasional passengers, or to every independently operated corner drugstore which sells tickets for a motor carrier. In determining what type of terminal facility is contemplated by the act and will be subject to the regulations adopted herein, we believe that not only physical characteristics but service characteristics as well should be considered. To illustrate, where a carrier's ticket agent does nothing more for the benefit of the carrier's passengers than sell tickets and post schedules, we would not consider his place of business to be a terminal facility which a motor carrier makes available to passengers of a motor vehicle operated in

interstate or foreign commerce as a regular part of their transportation. On the other hand, if in addition to selling tickets, the agent offers or provides terminal services and facilities for the comfort and convenience of interstate passengers, such as a public waiting room, restroom, or eating facilities, it would appear that the premises where these services and facilities are made available should be considered as part of the carrier's terminal facilities.

Proposed section 4 of the regulations reads as follows:

> As used in the preceding section the word "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished, on the basis of race, color, creed, or national origin.

This regulation, when read in conjunction with section 3, would prohibit a carrier from utilizing in interstate commerce any "terminal facility" in which there appears a sign designating facilities for the separate use of the races. The mere presence of such a sign would be enough to prohibit a carrier from utilizing the facility in interstate commerce.

Section 5 would provide that:

> No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of this regulation. Such a sign or placard shall be captioned, in large black type, "PUBLIC NOTICE: Requirements of Law for Terminal

> Facilities and Stops of Interstate Motor Carriers of Passengers, by Authority of the Interstate Commerce Commission of the United States Government."

There is justification for requiring that a notice be posted at "terminal facilities" utilized by carriers for the reasons explained in connection with rule 2. Such action will constitute notice to all concerned that segregation may not be practiced in interstate terminal facilities.

The sixth section of the proposed regulations provides that;

> Nothing in this regulation shall be construed to relieve any interstate motor carrier of passengers of any of its obligations as such under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

This section would make it clear that respondents are not to be relieved of any obligations under the act, and we believe that its adoption is justified. The duty to provide service to the public and to provide for the safety and comfort of passengers will not be altered by the adoption of the proposed regulations. A carrier may still exercise necessary reasonable control over its passengers as, for example, in the ordinary request made by the driver of a crowded coach to "move to the rear of the aisle" or "step behind the 'safety line'." It is not the purpose of the regulations to change any lawful functions of a carrier. A carrier may continue under the prescribed regulations to provide a bona fide reserved-seat service, or continue to offer its equipment for the exclusive use of charter parties, provided, of course, that in so doing it engages in no discriminatory practices.

Section 7 of the proposed regulations would provide that:

> Every interstate motor carrier of passengers shall report to the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic, with its observance of the requirements of law, including this regulation. Such report shall include a statement of the actions that such carrier may have taken to eliminate any such interference.

This regulation would require respondents to report to this Commission any interference by others with their observance of the regulations. Our power to prescribe a rule in this area is found in sections 204(a)(7) and 220(a) of the act. We believe this regulation is a logical substantive aid to enforcement of the requirements of the act, and will inform local officials and others of the requirement which the Interstate Commerce Act places upon interstate motor carriers of passengers to refrain from unjust discriminatory practices.

The proposed regulations are worded so as to apply to "interstate motor carriers of passengers." Our order instituting this proceeding and our discussion herein have dealt only with motor *common* carriers of passengers because of the fact that section 216(d) is directed to common carriers. Accordingly, the regulations prescribed will reflect this statutory limitation. Similarly, our jurisdiction does not extend to the operations of an interstate carrier when such a carrier is transporting no interstate passengers and its vehicle is, in fact, engaged exclusively in intrastate commerce. We believe that the use of the words "as such" in sections 1 and 2 of the proposed regulations reflects this limitation, but the regulations prescribed

will be appropriately clarified. Other necessary minor changes have also been made. Several other modifications of the regulations have been suggested by the parties. To the extent that these suggestions, including the definition of "terminal facilities" proposed by respondents and the requested exemption from these regulations of charter bus operations, are not incorporated or discussed in our conclusions or findings, they have been considered by us and found to be impractical or unnecessary. The regulations, amended in accordance with the foregoing discussion, are set forth in appendix B.

In summary, we are prescribing in this proceeding substantive regulations further implementing the prohibitions of the act, as construed by the courts and this Commission, designed to eliminate unjust discrimination resulting from segregation of interstate passengers by bus operators subject to our jurisdiction. Obviously, we cannot anticipate the precise effect of application of the regulations to each and every factual situation that may arise, but the regulations should make clear to respondents and others the rights of passengers under the Interstate Commerce Act.

We find, in view of the persistence and prevalence of the practices described in the foregoing, that requiring certain interstate passengers to establish their interstate passenger status, while not requiring such a showing by other such passengers, constitutes in itself an unjust discrimination, undue prejudice and disadvantage, forbidden by section 216(d) of the Interstate Commerce Act against interstate passengers subjected to such identification requirements; that in order to prevent discrimination, preference, and prejudice among interstate passengers, it is necessary to prohibit discrimination, preference, and

prejudice in connection with the operation by respondents of motor vehicles in interstate or foreign commerce with respect to both interstate and intrastate passengers; that the rules which we prescribe in this proceeding are necessary to eliminate discrimination and prejudice prohibited by section 216(d); and that the regulations (49 C.F.R. 180a(1) et seq.) set forth in appendix B hereto are reasonable, necessary, and lawful, and that they should be adopted and made effective in accordance with the terms of the attached order.

An appropriate order will be entered.

APPENDIX A

The proposed regulations as amended

Section 1: No interstate motor carrier of passengers shall as such operate vehicles on which the seating of passengers is based upon race, color, creed, or national origin.

Section 2: Every interstate motor carrier of passengers shall conspicuously display and maintain, in each vehicle which it operates as such, a plainly legible sign or placard containing the statement, "By order of the Interstate Commerce Commission, seating aboard this vehicle is without regard to race, color, creed, or national origin."

Section 3: No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race, color, creed, or national origin. As used in this regulation the words "terminal facilities" mean all facilities including waiting room, restroom, eating, drinking, and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation.

Section 4: As used in the preceding section the word "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished, on the basis of race, color, creed, or national origin.

Section 5: No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of this regulation. Such a sign or placard shall be captioned, in large black type, "PUBLIC NOTICE: Requirements of Law for Terminal Facilities and Stops of Interstate Motor Carriers of Passengers, by Authority of the Interstate Commerce Commission of the United States Government."

Section 6: Nothing in this regulation shall be construed to relieve any interstate motor carrier of passengers of any of its obligations as such under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

Section 7: Every interstate motor carrier of passengers shall report to the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic, with its observance of the requirements of law, including this regulation. Such report shall include a statement of the actions that such carrier may have taken to eliminate any such interference.

APPENDIX B

The regulations adopted

(1) *Discrimination prohibited.* No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall operate a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed, or national origin.

(2) *Sign to be posted in vehicles.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall conspicuously display and maintain, in all vehicles operated by it in interstate or foreign commerce, a plainly legible sign or placard containing the statement: "Seating aboard this vehicle is without regard to race, color, creed, or national origin, by order of the Interstate Commerce Commission." This section shall cease to be effective on January 1, 1963, unless such time be further extended by the Interstate Commerce Commission.

(3) *Notice to be printed on tickets.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall cause to be printed on every ticket sold by it for transportation on any vehicle operated in interstate or foreign commerce a plainly legible notice as follows: "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin." This section shall be applicable to all tickets sold on or after January 1, 1963.

(4) *Discrimination in terminal facilities.* No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce provide, maintain arrange-

ments for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin.

(5) *Notice to be posted at terminal facilities.* No common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce, utilize any terminal facility in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of these regulations. Such sign or placard shall be captioned: "Public Notice: Regulation Applicable to Vehicles and Terminal Facilities of Interstate Motor Common Carriers of Passengers, by order of the Interstate Commerce Commission."

(6) *Carriers not relieved of existing obligations.* Nothing in this regulation shall be construed to relieve any interstate motor common carrier of passengers subject to section 216 of the Interstate Commerce Act of any of its obligations under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

(7) *Reports of interference with regulations.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act operating vehicles in interstate or foreign commerce shall report to the Secretary of the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic with its observance of the requirements of these regulations. Such report shall include a statement of the action that such

carrier may have taken to eliminate any such interference.

(10) *Definitions.* For the purposes of these regulations the following terms and phrases are defined:

(a) *Terminal facilities.* As used in these regulations the term "terminal facilities" means all facilities, including waiting room, restroom, eating, drinking, and ticket sales facilities which a motor common carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation.

(b) *Separation.* As used in section 4 of these regulations, the term "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished on the basis of race, color, creed, or nation origin